IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

Bail Appl..No. 4370 of 2007()

CRIME NO.134/07 OF THRITHALA POLICE STATION

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PETITIONERS/ACCUSED NOS.1 TO 4

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1. RAJESH,
   S/O.VELAYUDHAN, AGED 20 YEARS,
   EDALAPALLATH HOUSE, PERUMUDIYOOR,
   PATTAMBI, PALAKKAD.

2. SHAJU P.V.,
   S/O.HAMSA, AGED 31 YEARS,
   PULICHARAM HOUSE, -DO- -DO-

3. ABHILASH.C.,
   S/O.SREEDHARAN, AGED 30 YEARS,
   -DO- -DO-

4. SIROSH.C.,
   S/O.SREEDHARAN, AGED 33 YEARS,
   -DO- -DO-.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS: COMPLAINANT

STATE OF KERALA REP.BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM,
REPRESENTING SUB INSPECTOR OF POLICE,
THRITHALA POLICE STATION.

BY P.P. SRI. P. RAVEENDRA BABU

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4370 OF 2007

Dated this the 19th day of July, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 to 4. Altogether, there are four accused persons. They face allegations under Sec.326 of the IPC. The alleged incident took place on 14/4/07 at about 6.45 p.m. Consequent to an incident which took place on the foot-ball field, the petitioners are alleged to have attacked the victim with a sharp iron rod. Fracture has been suffered by the victim. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The disputes have since been settled. In these circumstances, directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioners, it is prayed.

3. The learned Public Prosecutor opposes the application. There are no circumstances justifying the invocation of the powers under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor. I find merit in the opposition. Powers under Sec.438 are to be invoked sparingly and in exceptional cases that too only in aid of justice. Such powers are not to be invoked as a matter of course. Compelling reasons must be shown to exist to justify such invocation of the extraordinary equitable discretion. Even the fact that the regular bail may have been granted to an accused, if he surrenders, will not ipso facto persuade this Court to invoke the extraordinary equitable discretion under Sec.438 of the Cr.P.C.

4. So reckoned, I do not find any satisfactory reasons to invoke the powers under Sec.438 of the Cr.P.C. This is an eminently fit case where the petitioners must appear before the learned Magistrate and seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously. Needless to say that the theory of

settlement of the dispute between the parties will also be taken into account by the learned Magistrate when the application for regular bail is considered.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge